



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

DANIEL L. BRENNER SENIOR VICE PRESIDENT, LAW & REGULATORY POLICY

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036-1903

TEL: 202.775.3664 FAX: 202.775.3603

August 30, 2005

Hon. Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Hon. Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Hon. Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Hon. Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in
the Omaha Metropolitan Statistical Area
WC Docket No. 04-223
Written Ex Parte Communication

Dear Chairman Martin and Commissioners Abernathy, Copps and Adelstein:

I am writing this letter on behalf of the National Cable and Telecommunications Association ("NCTA") and our members, which serve more than 90 percent of the nation's cable television households. Cable operators are the leading facilities-based telephone competitors in the U.S., providing both circuit-switched and interconnected VOIP service to over three million customers. For the reasons described below, NCTA urges the Commission to deny Qwest's petition for forbearance from its obligations as an incumbent LEC in the Omaha MSA.

This proceeding is unusually significant because it is the first attempt by an incumbent telephone company to be relieved of its obligations under Sections 251(c) and 271 of the Communications Act by virtue of its losing retail market share to competitors. Like the Commission's consideration of early requests by the Bell companies for long distance authorizations, this proceeding will set an important precedent, in this case by deciding whether the threshold for forbearance from these provisions has been met. This proceeding threatens to eliminate the very competitive advances that resulted from the Commission's significant review and refinement efforts in connection with the Bell companies' 271 applications. Consequently, the Commission must be particularly careful to set standards consistent with the intent of Congress in adopting Sections 251(c) and 271.

The proper forbearance standard for Sections 251(c) and 271 focuses on the purpose of those provisions. As the Commission previously has observed, Congress adopted these provisions to ensure that competitive providers of local telephone service (such as cable telephony providers) have the ability to interconnect with incumbent LECs on reasonable and economic terms and are not impaired by lack of access to key choke points of the public switched network owned and controlled by incumbent companies. Without such interconnection, competitors would not be able to provide consumers with meaningful alternatives to incumbent LEC offerings.

While Qwest has focused its showing almost exclusively on retail market share, that showing -even if factually accurate- does not address Congress's core concerns in enacting Sections 251(c) and 271: whether competitors are dependent on an ILEC like Qwest for interconnection and exchange of traffic. The Commission's review should be guided by the extent to which other carriers rely on Qwest for interconnection and the extent to which Qwest could leverage its network to erect barriers to competition in the marketplace if forbearance were granted. In addressing these touchstone issues, the Commission should consider whether there are adequate alternatives to Qwest for interconnection and whether Sections 251(c) and 271 continue to be necessary to ensure that competitors can interconnect, on an economically efficient basis, with Qwest. This inquiry properly centers the Commission's analysis on the wholesale, carrier-to-carrier interactions that are at the heart of the protections of Sections 251(c) and 271.

The record in the proceeding shows that Qwest has not, and could not, meet this burden. Qwest has the only ubiquitous network in the Omaha Metropolitan Statistical Area (MSA). No other network is comparable in its scope and reach. Even Qwest's largest competitor provides no service at all in one quarter of the wire centers that are the subject of the forbearance request and must depend on interconnection through Qwest to reach half of the other providers in the Omaha MSA. This is the best-case competitor scenario in Omaha: Every other competitor is even more dependent on Qwest. These facts alone demonstrate that relieving Qwest of its obligations under Sections 251(c) and 271 will permit Qwest to take advantage of the power it retains from its legacy monopoly status, without any countervailing benefits to consumers or competition in the Omaha market. Consequently, the Qwest petition should be denied.

In accordance with Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed with the Secretary's Office on this date.

Respectfully submitted,



Daniel L. Brenner